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ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 7th September 1954

S.R.O. 3162.—Whereas the election of Shri Murlidhar and Shri Karan Singh, members of the Legislative Assembly of the State of Madhya Bharat, from the Morena constituency of that Assembly, has been called in question by an election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Kadam Singh, son of Shri Bhagwan Singh, of the Caste Gujar, Morena (Madhya Bharat);

And whereas, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of section 86 of the said Act, for the trial of the said election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of section 104 of the said Act, the Election Commission hereby publishes the said Order of the said Tribunal.

BEFORE THE ELECTION TRIBUNAL, GWALIOR, MADHYA BHARAT

ELECTION PETITION No. 20 OF 1953

PRESENT

1. Shri Suraj Bhan, B.A., LL.B.—*Chairman.*
2. Shri S. M. Pagnis, M.A., LL.B.—*Member.*
3. Shri S. K. Gokhale, M.A., LL.B.—*Member.*
- Kadam Singh s/o Bhagwan Singh, Caste Gujar, Morena—*Petitioner.*

Versus

1. Shri Murlidhar s/o Purushottam Singh, Jiawaji Ganj, Morena,
 2. Shri Karan Singh s/o Uday-Bhan, Chamar, Village Hussainpura, Majra Chhole ki Saray, Post and Tehsil Morena,
 3. Anand Bihari s/o Pt. Krishna Biharilal of Sarafa Bazar, Lashkar,
 4. Mangal Singh s/o Thakurdas, Chamar, Tikonja Morar,
 5. Vivekanand s/o Mohan Lal, Chamar, Khatik, Mohalla Morar,
 6. Sovaran Singh s/o Gulab Singh, Mohalla Dattapura, Morena,
 7. Jahar Singh s/o Kalyan Singh, Ward No. 4, Morena,
 8. Devi Singh s/o Bhagwan Singh, Village Naik Pura, Post Morena,
 9. Bhagri s/o Durjan, Chamar, Village Hussain Pura, Majra Chhole ki Saray, P.O. Morena,
 10. Raja Ram s/o Khuman, Chamar, Ghosipura, Gwalior City—*Respondents.*
- under section 81 of the Representation of the People Act, 1951.

JUDGMENT

1. The petitioner Shri Kadam Singh, describing himself as an elector of Morena Double Member Constituency, No. 73 of the State of Madhya Pradesh, sought to set aside the election of Shri Murlidhar Singh, Respondent No. 1, alleging against him several corrupt practices such as bribery, undue influence, falsity of election expenses and publication of false statement, and certain irregularities as detailed in the petition. The petitioner has claimed that if the election of Respondent No. 1 be declared void or the election be declared void, the costs may be awarded to the petitioner against the Respondent No. 1 or whose name is opposite the petition.

2. The allegations made in the petition against Respondent No. 1, his canvasser and against the Officers in brief are:—

(a) Against Respondent No. 1—

(i) That he obtained and procured and also attempted to obtain and procure the assistance of persons serving under the Government of Madhya Bharat as detailed in the List of the particulars marked 1.

(ii) That he hired and procured vehicles for the conveyance of electors to and from the Polling Stations. The details are given in List No. 2.

(iii) That he himself and through his agents, workers and supporters distributed red caps gratis to the electors which amounts to bribery as defined in section 123(i) of the Representation of the People Act, 1951.

(iv) That he issued pamphlets with the help of the Secretary, Hindu Mahasabha, Madhya Bharat, making false statements about cow-slaughter with the object of harming Congress candidate. All this amounts to corrupt practice as detailed in List No. 4.

(v) That he offered food and sweets to the electors on the election day as detailed in List No. 5.

(vi) That he published a poster wherein he alleged that the bullocks of the Congress are *थोड़े की टट्टे* and that in the last general election the Congress looted the public by giving *घिस्सा पट्टे*. These statements of facts were false and were made to prejudice the prospects of Respondent No. 1 the Congress candidate and were false. (The poster is attached as annexure B).

(vii) That he has filed a false return of election expenses as detailed in para. 15 of the petition.

(viii) That he himself or through his agents, workers or supporters published a number of pamphlets without the names of the presses printed therein.

(ix) That he exhorted Brahman voters to vote for Respondent No. 1 on the basis of caste.

(b) Against the canvasser of Respondent No. 1—

(i) The canvasser of Respondent No. 1 created disturbances at Polling Centre Jaura Khurd, No. 53 and Polling Centre 58, Morena Dak Bungalow which greatly influenced the electors at these polling stations and this has materially affected the result of Election. (Annexures X and Y).

(c) Against Officials—

(i) That the nomination papers of Respondent No. 1 and Respondent No. 2 were improperly accepted whereby the result of election has been materially affected.

(ii) That the date of birth of Respondent No. 1 as shown in the nomination paper is wrong.

(iii) That the result of the election has been materially affected by the improper refusal of votes as detailed in List 6.

(iv) That the provisions of Representation of the People Act and Rules made thereunder were not complied with by the Election Authorities, *vide* List No. 7 (Para. No. 17).

(v) That the officers controlling the election have canvassed and otherwise helped the election of Respondent No. 1 (para. 18).

3. Respondent No. 1 has denied all the allegations made against him in the petition and has further alleged that the election is neither void nor is liable to be set aside. Respondent No. 1 while denying all the allegations made in the

8 of the petition has said that full particulars of each material facts as enumerated under sub-clauses (i), (ii), (iii), (iv), (v), (vi) and in the lists attached to these sub-clauses are not given and so these allegations cannot be enquired into. He has further contended that the allegations against himself and the Officers are vague and therefore, should be struck off. He further maintained that the returns of expenses submitted by him are correct.

Respondent No. 2, a scheduled caste returned candidate supports the petition on his extent that the election of Respondent No. 1 only to be declared void and Respondent No. 6 to be declared elected in his place. He claims his expenses.

Respondent No. 3 generally admits the correctness of the petition excepting allegations in para. No. 10 of the petition against him. He also claims the costs. Respondent No. 6 is in full agreement with the petitioner and supports the petitioner.

All other respondents have not filed their written statements and have not taken any part in the trial of this Election Petition.

The following issues were framed in the case:—

(1) Is the petitioner competent to present this Election Petition?

(2) Did the candidates (except Respondent No. 1) mentioned in para. No. 7 of his petition obtained the votes mentioned against their names?

(3) Are the full particulars of each material facts as enumerated in para. 8 of the petition under sub-clauses (i), (ii), (iii), (iv), (v) and (vi) and the lists attached to these sub-clauses not given and thus they cannot be enquired into and is the petition liable to be struck off on this account?

(4) Did Respondent No. 1 obtain and procure or attempted to obtain and procure assistance for the furtherance of the prospects of his election from person working under the Madhya Bharat Government?

(5) Did Respondent No. 1 or his agents hire or procure conveyance and vehicles for the conveyance of electors to and from several polling stations as filed in List No. 2.

(6) Did Respondent No. 1 himself or through his agents distribute red caps and sweets to electors to induce them to vote for Respondent No. 1 and if so, with what effect?

(7) Was the pamphlet marked as annexure A issued with the connivance of Respondent No. 1 or his agents and did it contain false statement which the Respondent No. 1 believed it to be false and did not believe it to be true, and if so, what is its effect on the election?

(8) Did Respondent No. 1 himself or through his agents offer sweets and fruits to electors on the polling day at the Polling Station named in the List No. 5 accompanying the petition.

(9) Did the Respondent No. 1 publish a poster marked as annexure (b) and contain a false statement as mentioned in para. 8, clause (vi) of the petition and if so, can it come under the purview of section 123, clause 2, sub-clause (5) of the Act.

(10) Were the nomination paper of Respondents Nos. 1 and 3 improperly accepted and as such has it materially affected the result of the election?

(11) Was there any improper refusal of votes (*vide* List No. 6 of the petition) and if so, has it materially affected the result of the election.

(12) Was the result of the election materially affected for the non-compliance set out in the list of particulars marked No. 7 filed with the petition?

(13) Did Respondent No. 1 or his agents incur or authorise the incurring of expenditure in contravention of R.P. Act and Rules thereunder as shown in List 1 with the petition.

(14) Did Respondent No. 1 file a false return of expenses of his election and if so, with what results?

(15) Did Respondent No. 1 omit to include expenditure incurred under various heads as detailed in para. 15 of the petition and if so, what is its effect?

(16) Did Respondent No. 1 himself or through his agent publish the pamphlets without the name of the press thereon as mentioned in para. 16 of the petition?

(17) Did Respondent No. 1 himself and through his agent exhort the Br electors to vote on the ground of caste and if so, with what effect?

(18) Did canvasser of Praja Socialist Party at the instigation of Respondent No. 1 created disturbance at Polling Centre, Jaura Khurd, No. 58, and Mo Dak Bungalow as given in para. No. 19 of the petition and has it materi affected the result of the election?

(19) Is the election liable to be set aside on the ground that illegal and corrupt practices and irregularities were so rampant that fair and impartial election impossible?

(20) Are the petition and the various lists attached to the petition put proper verified and if so, what is its effect?

(21) Is Respondent No. 3 entitled to costs?

(22) To what relief the petitioner is entitled?

Issue No. 1.—Shree Laxman Rao, P.W. 1, the Returning Officer of the Mor Bye-election in this case has produced before us the voter's list, Ex. P-1 of constituency wherein we find entered the applicant's name against No. 141. Kadam Singh son of Bhagwan Singh. There is no rebuttal of this evidence; we decide this issue in favour of the petitioner and hold that the petitioner entitled to present this election petition.

Issue No. 2.—Similarly we find this issue proved by the statement of Sh. Luxman Rao, P.W. 1, the Returning Officer of this bye-election, Ex. 2 and Ex produced by him and hold that the numbers of the polled votes as given para. (7) of the petition is correct.

1. Murlidhar	..	..	..	8,613
2. Karan Singh	..	..	..	7,187
3. Anand Bihari	..	..	..	3,238
4. Mangal Singh	..	..	..	6,818
5. Vivekanand	..	..	..	2,558
6. Sovaran Singh	..	..	..	8,359

Issue No. 3.—After hearing the argument of the petitioner and the Respondent No. 1 this tribunal came to the conclusion that the petitioner be asked to give further and better particulars of the allegations in paras. 8(1), 8(3) and 8(5). Some items in the lists were vague and therefore ordered to be struck off. The full text of this order, dated 22nd January, 1954, is appended herewith and forms part of this final judgment. Similarly by another order of this date some of Respondent No. 1's objections about vagueness of the petition were upheld and others disallowed. The full text of this order also will form part of this final judgment.

Issue No. 4.—The details about Government servants helping Respondent No. 1 are given in List 1 annexed with petition. In brief they are:—

(i) Raghunath Singh Gujar, Patel of Tiktoli, acted as polling agent and canvassed votes for Respondent No. 1.

(ii) Constable on duty at the Polling Station No. 73/73, Banmor C. canvassed votes for Respondent No. 1.

(iii) Polling Officers canvassed votes.

(iv) Paras Ram, Constable at Lalor canvassed votes.

(v) The following Patels canvassed votes:—

1. Naval Singh—Husainpur.
2. Ghamandi Singh—Gadora.
3. Harmohan Singh—Bhesora.
4. Gajraj Singh—Sihori.
5. Chandan Singh—Chhonda.
6. Brijpal Das—Hingona Khurd.
7. Bisal Singh—Morena Gaon.
8. Narayan Singh—Hasai Kathoda.
9. Sitaram—Miragpura.
10. Hubba Lal—Padawali.
11. Bhikam Singh—Maina Basai.

(vi) The following Patwaris and Teachers canvassed and worked for Respondent No. 1:—

1. Vidya Ram—Hingona School.
2. Ram Krishna—Chhonda Master, Miragpura.
3. Lalji son of Rajval—Khandoli.
4. Basudeo Prasad—Bhensora.
5. The Patwari of Bamroli.

By our order, dated 22nd January, 1954, the petitioner was ordered (a) to give further and better particulars of the item (1) of this List 1(b) to confine his evidence to the respective villages of the patels, in item (v) and not allowed to produce any evidence of the item (vi) as this item was to be struck off the List No. 1.

Murlidhar Singh, Respondent No. 1 and Raghunath Singh, R.W. 9, both deny the execution of the polling agent's appointment form (Ex. 62). Mr. Banmali Dwivedi by comparing the signatures opines that the signatures of both Murlidhar Singh and Raghunath Singh do not tally with their admitted signatures. But we are of the opinion that official record regularly kept by the Returning Officer is more trustworthy. We ourselves have the signatures before us and there is the opinion of the document expert Mr. Bihari Lal, P.W. 90. We hold that Raghunath Singh was appointed by Murlidhar Singh as his polling agent and that Raghunath Singh, Patel of Tiktoli, had accepted to work as such though he did not actually act as polling agent at Ghuraiyya Basai Polling Station.

As has been held by this Tribunal in *Sitaram vs. Shree Bindrawan Prasad Tiwari and others* (Election Petition No. 21 of 1953) following the Supreme Court decision in *Satya Dev v. Padma Dev* (Supreme Court Appeal 52 of 1954) that merely being or acting as polling agent of a candidate does not come within the mischief of section 123(8), R.P. Act, we hold therefore, that Raghunath Singh being a polling agent of Respondent No. 1 does not render Respondent No. 1's election void.

In the additional list of better particulars the petitioner has given a list of nine villages where Raghunath Singh is alleged to have canvassed votes for Murlidhar Singh and another list of patels (1) Naval Singh, (2) Ghamandi Singh, (3) Har Mohan Singh, (4) Gajraj Singh, (5) Chandan Singh, (6) Brijpal Das, (7) Bisal Singh, (8) Narayan Singh, (9) Sitaram, (10) Hubba Lal and (11) Bhikam Singh who have canvassed votes for Respondent No. 1. Petitioner has produced Ganga Ram, P.W. 38, Ochhe Singh, P.W. 42, Maharaj Singh, P.W. 37, Teja, P.W. 41, Girwar, P.W. 44, Rajaram, P.W. 39, Jahar Singh, P.W. 36, Chhattar Singh, P.W. 43, Bhagari, P.W. 81, Shankar Singh, P.W. 25, Maniram, P.W. 26, Jodha Ram, P.W. 27, Nattha, P.W. 56, Bhogi Ram, P.W. 61 and Jugale, P.W. 79. The Respondent No. 1 has produced Tikaram, R.W. 20, Rajaram, R.W. 28, Ram Gopal, R.W. 42 and Fatehsingh, R.W. 43.

Of these the evidence of Teja, P.W. 41, Rajaram, P.W. 39, Shankar Singh, P.W. 25, Mani Ram, P.W. 20, Jodha Ram, R.W. 27 and Nattha, P.W. 56, is silent about Raghunath Singh's canvassing votes for Respondent No. 1. On reading the depositions of other witnesses, we come to the conclusion that the witnesses are not speaking the whole truth. Petitioner's witnesses depose the presence of the patels (Raghunath Singh one among them) and in their villages canvassing votes for Murlidhar Singh, Respondent No. 1. Respondent's witnesses deny the allegation of petitioner's witnesses.

On reading the whole evidence about this part of the issue, we are inclined to hold that Raghunath Singh has asked the voters to vote for Respondent No. 1. But this finding of ours has no effect on his election as there is no evidence of the fact that Raghunath Singh exhorted voters at the bidding or with the connivance of Respondent No. 1 or his agent as is required by section 123 of the R.P. Act. We, therefore, decide that Raghunath Singh's action whatever, it be does not affect the validity of Respondent No. 1's election.

The second allegation is against the Police Constable at Polling Station (73/73) at Banmor Cement who is alleged to have asked voters to vote for Respondent No. 1. The only witness Ram Niwas Sharma, P.W. 82, deposes that he saw a constable in uniform uttering the words झोपड़ी में वोट दो (Put your votes in the "Hut"). This witness says that he is the General Secretary of the Provincial Congress Committee doing the propaganda for Sovaran Singh the Congress candidate. He admits, he never made any report of this incident anywhere to any body, nor can he give the name or the number of the Police Constable on duty at this Polling Station. To our mind this witness is not trustworthy. This part of the issue, therefore, is decided against the petitioner.

The third allegation is against the Polling Officers at the following Polling Stations:—

1. Kai Thoda,
2. Gadora,
3. Padavali,

the allegation being that they canvassed votes for Respondent No. 1. No evidence is produced by the petitioner to prove this allegation. At the time of the argument also there was no reference to this item. We hold this item as "not proved". Paras Ram, Constable, R.W. 25 and the Presiding Officer Shri Vinayak, R.W. 5 at Lalor were examined before this Tribunal. There is also the report of the Presiding Officer to the effect that every thing was normal at Lalor Polling Station. Paras Ram, R.W. 25, was under direct observation of the Presiding Officer and this officer deposes that the Constable never did any kind of propaganda for any body. Bajnath, P.W. 12, simply says that Paras Ram was posted at Lalor. Chakrapan, P.W. 67, is too vague to be relied upon. This part of the issue is decided against the petitioner.

Thus the whole issue No. 4 is decided against the petitioner.

Issue No. 5.—By our order, dated 22nd January, 1954, it was decided that—

(1) The corrupt practice of hiring vehicles will be confined to Respondent No. 1 only and evidence about illegal hiring of vehicles by other workers will not be led.

(2) Similarly clauses Nos. 2 and 4 of the List of further particulars for para. 8(2) was declared to be vague and ordered to be struck off. The name of the servant who was driving the tractor was ordered to be furnished.

The petitioner has introduced the evidence to show that one Chima, Respondent No. 1's driver was stopped by the petitioner's witness Phool Chand, P.W. 84. There were five women and two men in the tractor. Phool Chand, P.W. 84, alleges that the women were being carried to the Polling Booth.

The names of the females are given as Gyaso, Hanso, Pancho, Hirdey and Rukma. They are alleged to have been in the tractor. Out of these Gyaso is produced and she deposes that she was taken by a person wearing a red cap from Gopalpura for purpose of casting vote. When the tractor was stopped by Phool Chand, P.W. 84 and people began to collect round the tractor, all the females disappeared.

Chima, R.W. 53, the tractor cleaner of Respondent No. 1, deposes that he was taking the tractor from Morena Mandi to Morena Village and in between these two places there was puncture in the tube of the tractor and the tractor could not move. He was going to purchase powerine for the tractor. He was waiting for the patch repairing out-fit for more than two hours in the afternoon before people collected round the tractor and made a row.

From the evidence of these witnesses and the two constables Puran Singh, P.W. 13 and Hirde Ram, P.W. 51, who saw the ladies at a distance, we come to the conclusion that there were ladies and not small boys (as Chima, R.W. 53 deposes) in the tractor. The story of there being a puncture in the tractor does not appear to be true.

But the petitioner has not proved that any or all of the females were as a matter of fact voters which he could have proved by producing the official voters list or certified extracts therefrom. It is also admitted by both the parties that Respondent No. 1 was not driving the tractor himself. There is no evidence to prove that Chima was carrying these females at Respondent No. 1's bidding. For these two reasons (namely, that females were not proved to be the voters from Gopal Pura and Respondent No. 1's orders to Chima to carry voters are not proved). Issue No. 5 is decided against the petitioner as "not proved".

Issue No. 6.—In the additional list of better and further particulars Morena City and sixteen other villages are mentioned where the red caps are said to have been distributed. More than fifty people are named who got the caps along with the dates of distribution. 25 witnesses have been examined on behalf of the petitioner and an almost equal number by Respondent No. 1. Petitioner and the Respondent No. 1 were also asked question about these red caps—Murlidhar Singh totally denying the distribution of caps.

Gambhir Chandra, P.W. 46, says the caps were distributed 4-5 days before the date of election (i.e. 12th July, 1953) while the list mentions the date of distribution as 1st July, 1953. Ratna, P.W. 57, says that the caps were distributed in the office 3-4 days before election. Ganesh Ram, P.W. 63, give the date of distribution as 7-8 days before election. Ram Singh mentions the date of distribution of the caps as 2-3 days before election. These witnesses are from Morena City.

anga Ram, P.W. 38 of Jigni, deposes about the distribution of caps and mentions Tika Ram as the person who got the cap. Tika Ram, R.W. 20, swears that he never got the red caps. Ochhe Singh, P.W. 42 of Jigni, names Raghunath Singh as the person who distributed the caps. This witness cannot give the date. Chhigam, P.W. 68 and Ram Kishan, P.W. 72, depose that Murlidhar Singh distributed caps. Chhattar Singh, P.W. 43, deposes that he received a red cap for Murlidhar Singh but that was torn now. Other witnesses also depose similarly. These witnesses cannot give dates nor all the names of the persons who received the caps. Respondent No. 1 in his deposition admits that he had purchased 500 caps from Agra at the time of General Election. But as his nomination was not accepted, he gave all these caps to his party. He cannot say how they were distributed or were dealt with.

Reading all the evidence about these caps we are inclined to the view that some caps were distributed at the time of this bye-election—might be for the party workers. Many of the recipients of the caps were children who could not be voters.

In order that this illegal distribution of caps may amount to bribery under section 123 of R.P. Act, the applicant ought to have proved, that these caps were given by the candidate to persons who were voters with the object of voting or refraining from voting at the election. Petitioner's witnesses deposed that red caps were distributed and they named the persons as well who received the caps. These persons were produced by the Respondent No. 1 who deposed that they never received any red cap from Murlidhar Singh. The petitioner's witnesses have admitted that many of the caps were meant for young children and it is evident that children could not be voters. So no question arises about the caps for the children. We find that the Respondent No. 1 did not distribute the red caps which could be called bribery for purposes of section 123(1). This issue is, therefore, decided against the petitioner.

Issue No. 7.—There is no evidence to prove that the pamphlet Ex. 52 was published with the connivance of Respondent No. 1 or his agents or that the pamphlet contains a false statement which the Respondent No. 1 believed to be false or did not believe to be true. Ram Singh, P.W. 64, simply deposes that Respondent No. 1 distributed pamphlets similar to Ex. 52.

From the perusal of this pamphlet, Ex. 52, we find that it exhorts voters to cast their votes in Deepak ki Peti and further exhorts people not to vote for Congress because Congress is not going to stop cow-slaughter. Petitioner's evidence does not prove this issue.

Issue No. 8.—Petitioner alleges that sweets and fruits were offered to electors at the following stations, Morena City, Hetampur and Dipari Gaon. Those witnesses who deposed about red caps also depose that sweets were distributed by Respondent No. 1. Mere distribution of sweets does not offend the provision of the R.P. Act. In order that this distribution of sweets may amount to bribery, it was necessary for the petitioner to name the recipients of laddoos in the list filed along with the petition and further to prove that recipients were voters, and that laddoos were offered to them to influence their voting. Persons alleged to have received the laddoos, namely (1) Laloo, (2) Gambhira, (3) Sirdar Paware, (4) Ratna, (5) Ghasi, (6) Balwant, (7) Shankar Lal, (8) Baboo Jatava, (9) Ganesh, (10) Chhattar Singh, (11) Jahar Singh, (12) Jang Jit, (13) Rajhans, (14) Vikram Singh, (15) Gulaba, (16) Kanhai Jatava and (17) Sawaliya, were produced by the Respondent No. 1 who swears that they never received any laddoos. The result is that issue No. 8 is decided against the petitioner.

Issue No. 9.—The publication of the poster marked as Ex. 61 (which is called annexure B by the petitioner) is admitted by the Respondent No. 1. Therefore the simple question for decision remains "Does the publication of Ex. 61 come within the mischief contemplated by section 123(5)." In order that the publication may amount to corrupt and illegal practice under section 123(5) it is necessary that:—(i) the publication must be of a fact which is false to the candidate's knowledge and should not be true to his knowledge, (ii) this statement of fact should be in relation to the personal character or conduct of the candidate and (iii) it should be reasonably calculated to prejudice the candidate's election.

In this case, the first essential is missing. The poster purports to denounce the Congress or Congress Government as having looted the public by telling lies (de de ghissa patti). There is no remark or no statement of fact with regard to the personal character or conduct of Respondent No. 6 and therefore the publication of this poster does come within the purview of section 123(5). The issue is decided against the petitioner.

Issue No. 10.—There is no evidence to prove this issue and moreover the , is not pressed by the petitioner. We therefore, hold this issue as not proved.

Issue No. 11.—This issue concerns eight items as given in List No. 6(1). The Returning Officer, P.W. 1, has admitted that postal votes were by mistake not included in the counting of votes when the result of the election was first declared. These votes were nine in numbers. Six for Respondent No. 6 and one for Respondent No. 1. This certainly is an irregularity but every irregularity does not vitiate the result of the election. To our mind this irregularity has no effect on the result of the election. We, therefore, decide this part of the issue against the petitioner.

In List No. 6 annexed to the petition, the petitioner names 7 polling centres (Hussainpur, Bhanpur, Dikhatkapura, Jarah, Sumaoli, Pidawali and Ardoni) where voters are alleged to have been refused to cast their votes. There is no evidence on the petitioner's side about Hussainpur Polling Centre. On the other hand D. G. Kanade, R.W. 3, Presiding Officer at this centre swears that no voter was refused his right of casting his vote. Chaturc, P.W. 52, Gayaram, P.W. 54, Jimipal, P.W. 59, Raje, P.W. 60, are from Bhanpur who do not say anything about refusal of vote. Gadna, P.W. 47, Angad, P.W. 48, Chhitaria, P.W. 49, are from Dikhat ka pura who also say nothing about their centre. Bhagari, P.W. 81, say that some voters were refused votes. He does not name them. Raghubir Sin, P.W. 69, says that 40 and 50 voters were refused votes. He does not name them. Ram Ratan, P.W. 15, says that they were returned back by Patawari who said that their names were not in the voters' list. Some were told that time was up. This witness also does not name the voters. Jagannath Singh, P.W. 16, says that voters were turned back because time was up. Respondent No. 1's witnesses Ram Gopal, R.W. 42, Bhikaram, R.W. 15 and Vasudeo Patwari, R.W. 21, says that no voters were refused their right of casting votes. No complaint was made to the Polling Officers at these places. An application, Ex. 38, by Data Ram and Bhagwan Singh was presented to the Returning Officer who could not take any action, because this application was not presented to the Presiding Officer of the Polling Station.

From the reports of the Presiding Officers at these polling centres we see that the polling was peaceful and according to rules. Some unauthorised person might have asked the voters to go back. But their actions cannot render the polling invalid. Moreover it is not proved as a fact that persons who were refused their voting right were as a matter of fact voters. We come to the conclusion that no voters were denied their right by any of the Presiding Officers at these centres.

Issue No. 12.—Respondent No. 6 submitted the list of his polling agents to the Returning Officer, P.W. 1, on 10th July, 1953. The date of election was 12th July, 1953. According to Rule 12 of the Representation of People (Conduct of Elections and Election Petitions) Rules, 1951, a candidate or his election agent is required to submit the list of polling agents at least 3 days before the date of election. The Returning Officer, P.W. 1, was quite justified in refusing to accept the polling agents' forms submitted beyond the prescribed period. Election proceedings in the absence of polling agent of a candidate or candidates are perfectly valid. Absence of polling agents at the polling booths might or might not have affected the voting figures. The law cannot help an idle or careless candidate. The presence or absence of the polling agents does not in any way affect the responsibility about safe keeping of ballot boxes and their seals, of the Election officials. This item is therefore, decided against the petitioner.

From the evidence produced by the petitioner we find that some of the appointment of agents' forms of Respondent No. 1 were incomplete in as much as there are no signatures of the polling agents on the forms, at the third place which would indicate that the candidate was making the required declaration. This is an irregularity. Similarly we find that at Dikhat ka pura Polling Station, Charan Singh was allowed to sit at the polling booth without proper authority with him. At Kotwal Polling Station, Khushal Chand was allowed to sit at the booth without proper authority but Baboo Lal was not allowed to be present there though under somewhat different circumstances. All this is irregular.

But the question before us at this stage is whether or not these irregularities vitiate the Election. Hammond is authority for the proposition that—

"It is not sufficient to prove irregularities at an election. It must be proved that they did actually materially affect the result of the election". (Election Cases India and Burma 1920—1935 by Hammond at page 52).

Corrupt motive by any of the officers is neither alleged nor proved. There is no evidence to prove that the result of the election was materially affected by the alleged irregularity. This item of the issue is decided against the petitioner.

(4) There is no evidence of the allegation that at polling Station Bhanpur (No. 41) and Jigni (No. 20) Ballot Boxes were not placed in the order prescribed by law. Neither there is any evidence to show that any of the voters were misled by the alleged misplacement of ballot boxes. Therefore, this item of the issue is decided against the petitioner.

(5) It is a fact that at Jarah Polling Station the premises requisitioned for polling purposes belonged to the respondent No. 1. This fact by itself cannot be considered to be an irregularity—much less an illegality—which would render the election void. Were any of the voters influenced by this fact? Did the respondent No. 1 make use of this fact for his propaganda purposes? Was the respondent No. 1 using the requisitioned premises during the period of requisition for his own purpose? There is not an iota of evidence on any of these points against the respondent No. 1. We reject this plea of the petitioner.

(6) There is nothing wrong if the counting once commenced, was carried on beyond the usual office hours. Counting agents of the candidates were present at the time and place of counting. Scrutiny of ballot papers was being carried out according to rules. All other formalities were being observed. It is not suggested that the counting was being done or supervised by unauthorised persons. We see nothing illegal in continuous counting of ballot papers, even though the counting had to be carried on for the whole of the night. We reject this plea of the petitioner.

(7) This item is struck off by our order dated 22nd January 1954.

(8) There is no evidence to prove that the Returning Officer was prejudiced against the Congress party or Respondent No. 6. Mere conjectures or suspicions which the petitioner or the defeated candidate had in their minds cannot be a substitute of proper proof. Plea is therefore rejected.

Issues 13, 14, and 15.—Issues Nos. 13, 14 and 15 are about election expenses. List No. 9 annexed to the petition contains 13 items. We take them up in seriatum.

(1) Gambhir Chandra, P.W. 46, Ratna, P.W. 57, Ghasi, P.W. 58, Ganesh Ram, P.W. 63, and Ram Singh, P.W. 64 say that the Respondent No. 1 had hired a house in Datta Pura Morena City for election purposes on hire. The hire (rent) of this house is not shown in the return of expenses by Respondent No. 1. Respondent No. 1 in his statement deposes that he never hired any house. Rameshwar Dayal, R.W. 45 (owner of the house alleged to be hired) son of Thakurdas says that he never gave his house on hire. We accept the Respondent No. 1's testimony on this point and reject this plea of the petitioner.

(2) The distribution of pamphlets by Respondent No. 1 is denied by him. We believe in his denial. No question of distribution therefore arises.

(3) Acharya Kripalani had come to Gwallor on P.S.P's invitation. Murlidhar Singh took him to Morena by a Motor car and his return journey was by rail. These expenses are shown by Respondent No. 1 in his return. The applicant maintains that Acharya Kripalani's tour was for respondent No. 1 and therefore all expenses whether defrayed by Respondent No. 1 or not must be deemed to be election expenses and such shown in the return. The question, therefore, for our decision is whether these expenses ought to have shown in his return by Respondent No. 1 or not.

Acharya Kripalani addressed two meetings at Banmor and the other at Morena. If one or more persons from among the persons who attended these meeting (or, better still) the reports of his speeches were before us we could easily decide whether Acharya Kripalani advocated the cause of his party or of this particular candidate. Bhikam Chand Jain R.W. 50 deposes that Acharya Kripalani had come to Lashkar in connection with the Agricultural Exhibition, the expenses of his visit were defrayed by the Socialist party of Lashkar. In absence of any report of the meeting addressed by Acharya Kripalani we cannot hold that he came to plead the cause of Respondent No. 1. This point is decided against the petitioner.

(4) For these very reasons we hold that there is nothing wrong if the full expenses of Shri Baleshwar Dayal and Shri Mir Mushtak Ahmad are not shown in the return filed by Murlidhar Singh Respondent No. 1.

(5) The petitioner ought to have given positive evidence to prove the expenses incurred by or on behalf of Malkhan Singh, Raghubir Singh Kushawah, Professor Chhote Lal Bharadwaj and Bhikam Chand Jain and then to show that expenses shown in the return are inaccurate. Murlidhar Singh deposes that the expenses

of meetings addressed by his workers and agents consisted of loud-speaker rent and lighting charges. One loud-speaker was purchased by him and the purchase price is shown in his return. Hire for the loud-speaker and lighting charges are included in the return of expenses. We hold this item of this charge as 'not proved'.

(6) Raja Pancham Singh, R.W. 37 swears that he by himself or along with Raghunath Singh Tikoli or Ram Singh of Bhodal-ka-pura or Nawal Singh of Nayak-pura never did any propaganda for Respondent No. 1. He does not hesitate to state that whenever any body asked his advice as to the candidate for whom votes should be given, he named Murlidhar Singh Respondent No. 1. When this witness (Raja Pancham Singh) never canvassed votes for the Respondent No. 1, no question of showing his travelling or touring expenses in the return arises.

(7) Murlidhar Singh did not purchase any red caps for this bye-election. The caps purchased by him were given away to the party when his nomination was rejected in the former general election. These red caps need not have been included in the return.

(8) Petitioner alleges that he has purchased wheat more than five maunds and that too in the "black market". Darshan Lal, P.W. 74 and Nawab Singh, P.W. 75 both prove the voucher (Ex. 59) for eighty Rupees. They say that the voucher represents the price of Bejhar (mixture of wheat and gram or wheat and barely) which was purchased by Respondent No. 1 at their shop, Nawab Singh, Darshal Lal in Morena Mandi. Murlidhar Singh Respondent No. 1 swears that Ex. 59 represents the price of wheat which is described as Bejhar by P.W. 74 and P.W. 75, perhaps because there was the admixture of gram with wheat. Petitioner has failed to prove that more or other wheat was purchased and that too in the "black market".

(9) Murlidhar Singh, Respondent No. 1 swears that voters lists were not copied and there was no expense incurred on this account. The petitioner has not produced any evidence to prove that these lists were as a matter of fact copied and expenses were incurred on such copies. This matter cannot be decided on conjecture or presumption. This item is not proved.

(10) Six of the Respondent No. 1's vouchers are without receipt stamps. Affixing a receipt stamp is the duty of the person receiving payment. Absence of the receipt stamp does not indicate that the expenditure was false or fraudulent. This tribunal has to satisfy itself that expenses shown in the return are not untrue. The petitioner ought to have produced evidence to prove the falsity of the vouchers which he has not done.

(11) To what items in part D of the election expenses the petitioner refers is not clear. This item was left out at the time of argument.

(12) Harmohan Singh of Bhesora R.W. 11 denies doing any canvassing work for Respondent No. 1. He further denies using any cycle from the shop of Chhote Singh of Morena as he had a cycle of his own. Chhote Singh, R.W. 52 says that Har Mohan Singh mentioned in the receipt is not Harmohan Singh Patel, R.W. 11, but is his nephew who is called by the name Mohan Singh as well as Har Mohan Singh. There appears to be something wrong about this item of expenditure, but what exactly is the mistake or falsity we have no sufficient evidence to determine. Benefit of doubt will naturally go in favour of Respondent No. 1.

(13) The mention of Baba Vijayanand's expenses would have been necessary if it were proved that this man specially came to Morena constituency for Respondent No. 1's election work. No such evidence is produced. This item also stands disproved. Thus issues Nos. 13, 14, 15 are decided against the petitioner.

Issue Nos. 16 and 17 are not pressed. These will be deemed as "not proved".

Issue No. 18.—S. G. Vishwaroop (P.W. 8) was the presiding Officer at the polling station Jaura Khurd (73/58). He proves the reports Ex. 36 and Ex. 37.

It appears that Mangal Singh (Respondent No. 2) accompanied by Chhote Lal and Dharma Swarup entered the polling booth without permission. Chhote Lal and Dharma Swarup were neither polling agents, nor they were accompanying any voter nor they were voters themselves. These people were creating unnecessary disturbance and shouting or asking to do this thing and that and threatening to make telegraphic complaints to superior Officers etc. All this was having bad effect on the voters. They left the place when they saw some officers coming. He recommended suitable action against these intruders. This was at about 10 A.M.

After these people left the polling was peaceful.

From these reports and the deposition of P.W. 8 we come to the conclusion that though there was some commotion because of Chhote Lal and Dharma Swarup during the morning part of the polling time, it was soon quieted and that the canvasser of the Praja Socialist party (to which Respondent No. 1 belongs) had no hand in it.

We, therefore, find the issue against the petitioner.

Issue No. 19.—The evidence produced by the petitioner does not convince us that illegal and corrupt practices and irregularities were so rampant in the constituency that fair and impartial election was impossible. In fact there was no direct evidence on this point—perhaps there cannot be any direct evidence. We find the issue against the petitioner.

Issue No. 20.—This issue was not pressed by Respondent No. 1. The petitions as well as the lists accompanying are verified by his personal knowledge. It has no effect so far as the merits of the petition are concerned. Hence this issue is decided against the Respondent No. 1.

Issue No. 21.—Anand Bihari Respondent No. 3 is made a party to this petition because the law requires that all the duly nominated persons must be made party to an election petition. The petitioner does not claim any relief against this Respondent No. 3. Respondent No. 3 has taken no interest in the proceedings of this petition after filing his written statement. This respondent has not proved any expense which should be awarded to him. This issue is therefore decided against Respondent No. 3.

Issue No. 22.—As we have decided all the issues against the petitioner, the necessary conclusion is that this petition must be dismissed.

From the evidence produced before us we have come to the conclusion that both the petitioner and the Respondent No. 1 have not been quite straight forward in their allegations and their evidence. They appear to be hiding or holding back some material evidence. Sovaran Singh, Respondent No. 6, the person for whom this petition is presented and pursued has not been produced by the petitioner nor has he come before us of his own accord.

Respondent No. 1 also has not been quite honest in his statement and evidence before us. Why should he have denied the appointment of Raghunath Singh as his polling agent. Why should he have insisted on producing evidence to support a wrong plea?

Considering all the facts of the case we are of opinion that both the contesting parties should bear their own costs

ORDER

The petition is dismissed. The parties shall bear their own costs.

(Sd.) SURAJ BHAN, *Chairman.*

(Sd.) S. M. PAGNIS, *Member.*

(Sd.) S. K. GOKHALE, *Member.*

Election Tribunal, Gwalior.

ANNEXURE I

(File No. 20 of 1953 Election Petition.)

ORDER

Issue No. 3.—We have heard Mr. Puttural Dube for Respondent No. 2 and Mr. Harihar Niwas Dwivedi for the petitioner. The point for determination in this issue is:—

Does not the petition comply with the provisions of Section 83 R.P. Act 1951 in certain respects? If so, what are they and what is their effect. Mr. Puttural, learned counsel for Respondent No. 1 has contended before us that para. 8 of the petition and the lists attached to these sub-clauses do not contain full particulars of each material fact and thus the petition is liable to be dismissed. The learned counsel has taken us through certain rulings in support of his contention. We have heard Mr. Dwivedi, the learned counsel for the petitioner on each sub-clause and list attached to para 8 of the petition and his arguments are that full particulars of corrupt or illegal practices so far as possible as to the names of the parties alleged to have committed and the date and place of the commission are given.

Before we go in for discussion of para. 8 of the petition as regards full particulars of corrupt and illegal practice we would like to mention the principles which we have taken into consideration for the decision of this issue.

Clause (2) of Section 83 of the R.P. Act is as follows:—

“The petition shall be accompanied by a list signed and verified in like manner setting forth full particulars of any corrupt or illegal practice which the petitioner alleges, including as full a statement as possible as to the names of the parties alleged to have committed such corrupt or illegal practice and the date and place of the commission of each such practice.”

The object of filing the list setting forth the particulars of corrupt and illegal practices along with the Election petition is, that the party who comes to the Court to defend the seat should not have matters sprung upon him in such a way as to embarrass him in the answer he gives, in other words, the object is to prevent him from being taken by surprise. In determining the question as to whether fresh particulars should be allowed or not, we while exercising this discretion have been guided by the single consideration namely, the fair and effectual trial of the petition. With this end in view we propose to consider each sub-clause of para. 8 of the petition and the list attached thereto and pass necessary orders:—

Para. 8(1).—This relates to canvassing done by persons serving under the Government of Madhya Bharat and the relevant list of particulars is list 1. The Para. No. 1 of this list does not give the date or dates and the village or villages where Raghunath Singh Patel canvassed votes for Respondent No. 1. They should be supplied.

In item 5th of this list the names of Patels and their village are given but no date and place of canvassing is given. During the course of arguments Mr. Dwivedi has admitted before us that these Patels confined their canvassing to these villages and by mistake this fact has not been made clear in this list. So the petitioner will confine his evidence to this extent and he need supply only the date or dates of their canvassing as the case may be.

Item No. 6th of this list is vague and does not give either the date or dates nor the place or places of their work nor the names of the persons or voters with whom the canvassing was done. So this para. is struck off. The rest of the list No. 1 is in order.

Para. 8(2).—This relates to illegal hiring of vehicles and the relevant list of particulars is list No. 2. In this list no names of workers, agents and supporters are mentioned. Mr. Dwivedi has admitted before us that he will confine himself to Respondent No. 1 so far as this corrupt practice is concerned and thus we allow him to confine his evidence to this allegation only.

Clause No. 2 and 4 of this list are vague and therefore they are struck off. The name of the servant who is alleged to derive the tractor should be given.

Para. 8(3).—This para. relates to corrupt practice of distributing red caps gratis to the electors and the relevant list is No. 3. It does not disclose as to when and to whom these were distributed and what was their number, so they should be supplied.

Para. 8(4).—This para. relates to issuing of pamphlets and making of false statements. The relevant list is List No. 4. This list is vague so far as workers, agents and supporters of Respondent No. 1 are concerned and it will not be just to ask the petitioner to supply the list at this stage, so that the petitioner will confine his evidence to Respondent No. 1 so far as this corrupt practice is concerned. Item No. 2 of this list is vague and therefore this is struck off.

Para. 8(5).—This clause relates to free offer of food and sweets to electors. The list attached to this clause is list No. 5. It does not contain the names of Agents workers and supporters of Respondent No. 1 who offered food and sweets. The petitioner is not allowed to furnish this list at this stage. The petitioner will thus confine his evidence to Respondent No. 1 so far as this allegation is concerned. This list does not contain the names of persons alleged to be fed. The petitioner is directed to disclose the names of the persons alleged to have been fed by Respondent No. 1.

Regarding para. 8 clause 6 no objection is taken by Respondent No. 1 and we found this para. in order.

In view of the above findings the petitioner is ordered to furnish further and better particulars on 1st of February 1954, and this issue No. 3 is decided accordingly.

(Sd.) SURAJ BHAN, *Chairman.*

(Sd.) S. M. PAGNIS, *Member.*

(Sd.) S. K. GOKHALE, *Member.*

Election Tribunal.

ANNEXURE II

(Election Petition No. 20 of 1953)

ORDER

We have heard Respondent's No. 1 application dated 19th January 1954. So far as objections regarding para. 8 of the petition are concerned, we have passed a separate order under issue No. 3 and now we will deal with only the rest of the objections raised by the learned Counsel for Respondent No. 1 in seriatum and pass the following order:—

1. The relevant list No. 6 for Para 11 of the petition is in order.

11. Para. 12 of the petition deals with the breach of the provisions of R.P. Act and rules made thereunder. The relevant list of particulars is list No. 7. Mr. Dwivedi argues that list 8 is also under para. 12 of the petition and it is by inadvertence that in list No. 8 it is written that it is under para. 13 of the petition. We have persued these lists and the relevant paras of the petition carefully and we agree to his contention and order that list No. 8 be considered as a list of particulars under para. 12 of the petition instead of para. 13. In list No. 7 clause 7 is vague and a mere case of suspicion. No definite charge is alleged and it is therefore, struck off.

Para. No. 13 and its relevant list No. 9 is in order. The return of election expenses being prepared by the Respondent himself there is no chance of his being taken by surprise hence this objection of Respondent No. 1 is overruled. Para. 17 has no list of particular. This para. does not contain the full particulars either to obviate the necessity of filing a separate list of particulars hence this para. 17 of the petition is ordered to be struck off.

Paral. No. 18. The petitioner will confine to produce evidence regarding the allegations made in this para. so far as the instances of the nature under reference pertain to lists Nos. 1, 6, 7 and 8 accompanying the petition.

(Sd.) SURAJ BHAN, *Chairman.*

(Sd.) S. M. PAGNIS, *Member.*

(Sd.) S. K. GOKHALE, *Member.*

[No. 82/20/53/15682.]

By Order,

K. S. RAJAGOPALAN, Asstt. Secy.

